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D.B. CIVIL INCOME TAX APPEAL NO.98/2006 .
[CIT BIKANER VS. PRAMOD KUMAR BANSAL]
DATED :15/12/2006.

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. GOPAL KRISHAN VYAS J.

Mr.K.K.Bissa for the appellant.

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Having heard learned counsel for the appellant we are of the opinion that no substantial question of law arises in this appeal. From the facts it is apparent that the order of assessing officer by which certain additions have been made were subjected to appeal and the assessee was granted certain reliefs by the CIT [Appeals]. After the appeal was decided the CIT [Administration] exercised its power under Section 263 of the Income Tax Act, 1961 and set aside the entire order of assessing officer and directed him to re-frame the whole assessment denovo.

On appeal against the order under Section 263 the Tribunal found that once the order of assessment was subjected to appeal and the order was passed in appeal by the Appellate Authority, the order of the assessing officer stood merged in the order passed by the Appellate Authority. The entire assessment could not have been reopened. At best, the CIT [Administration] could exercise his power under Section 263 of the Income Tax Act only in respect of matters which were not subject matters of appeal and were beyond it. Therefore, the order of the Commissioner was set aside.

Aggrieved with the aforesaid order of the Tribunal dated 08.07.2005 this appeal has been filed. It is contended by the learned counsel for the appellant that the appeal against the order under Section 263 could have been heard by a Division Bench of the Tribunal and not by Single Bench. Hence, this order of Tribunal cannot be sustained.

However, we find that there cannot be two opinions on exercising of revisional jurisdiction by the CIT [Administration]. It has no jurisdiction to hold that part of the order which merged in the appellate order to be erroneous and prejudicial to interest of Revenue when the same has been decided by the Appellate Authority in appeal against the assessment order . It is against all canons of discipline of amongst hierarchy of statutory authorities.

Therefore, the order of the CIT [Administration] being apparently without jurisdiction, it cannot be said that merely because of the forum of hearing by Division Bench gives rise to any substantial question of law, having any being on the ultimate outcome of the case. The appeal fails and is hereby dismissed.

[GOPAL KRISHAN VYAS],J. **[RAJESH BALIA], J.**

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